

DEC 5 2006

BEFORE THE FEDERAL ELECTION COMMISSION

COMMISSION
SECRETARIAT

In the Matter of

Swift Boat Veterans and POWs for Truth
f/k/a Swift Boat Vets and POWs for Truth
f/k/a Swift Boat Veterans for Truth

MUR 5511
MUR 5525

2006 DEC -5 A 9 27

SENSITIVE

GENERAL COUNSEL'S REPORT #3

I. ACTIONS RECOMMENDED

(1) Accept the Conciliation Agreement with Swift Boat Veterans and POWs for Truth ("SwiftVets"); (2) Take no further action with respect to the Alachua Bush-Cheney Committee, Roy Hoffman, Charles Plumly, Alvin Horne, John O'Neill, Bob Perry, Harlan Crow, Merrie Spaeth, Bill Lannom, William Franke, and Weymouth Symmes; and (3) Close the file.

II. INTRODUCTION

The Commission previously found reason to believe that SwiftVets violated 2 U.S.C. §§ 433 and 434 by failing to register and report as a political committee during the 2004 election cycle, and that it violated 2 U.S.C. §§ 441a(f) and 441b(a) by accepting excessive and prohibited contributions.

We recommend that the Commission accept the attached conciliation agreement negotiated with SwiftVets, which would be among the first conciliation agreements with a Section 527 organization in connection with 2004 election cycle activity, and would provide substantial guidance on the application of 11 C.F.R. § 100.22(b).

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1 the agreement contains

2 the original legal recitations and sets forth the Commission's determinations
3 concerning the prerequisites of political committee status. In sum, SwiftVets has agreed to no
4 longer contest the Commission's conclusions as to the violations the Act stemming from its 2004
5 activities and has agreed to pay a civil penalty of \$299,500. SwiftVets also has agreed to
6 appropriate future conduct prohibitions and additional disclosures of their 2004 election cycle
7 activities.

8 Because SwiftVets has represented that it will discontinue its operations and donate its
9 remaining cash on hand to a charity supporting the families of U.S. servicemen and
10 servicewomen killed or wounded in the Iraq War, the agreement does not require it to register
11 and report as a political committee at this time. The agreement, however, does require SwiftVets
12 to register and report if it engages in activities that trigger federal political committee status in
13 connection with a future election.

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15 One of the original complaints also alleged that the Alachua Bush-Cheney Committee
16 received excessive in-kind contributions from SwiftVets in the form of coordinated expenditures.
17 The investigation, however, revealed that this title was used by an *ad hoc* group of individuals in
18 connection with a single event, but that there was no legal entity with this name.

19 Accordingly, we recommend that the
20 Commission take no further action and close the file as to this respondent. In addition, the
21 complaints in these matters previously named various SwiftVets officers, consultants and donors
22 as respondents in these matters. The Commission took no action as to these individuals when it

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1 made reason-to-believe findings at the beginning of this investigation. In light of the conciliation
2 agreement with SwiftVets, we recommend that the Commission exercise its prosecutorial
3 discretion by taking no action and closing the file as to these individuals.

4 **III. DISCUSSION**

5 **A.**

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The proposed civil penalty of \$299,500 is sufficient to speak to the seriousness of the

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violation and the Commission's vindication of the applicable laws.

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The attached agreement also requires SwiftVets to disclose its financial activity from 2003-04 in reports filed with the Commission by filing their IRS Form 8872s from 2003-04, to be supplemented with FEC Form 3X summary pages. *See* Para. VI.3. The Form 8872s included itemized contributions and receipts, disclosing all of SwiftVets' financial activity, and the Form 3X summaries would disclose total amounts of receipts and disbursements from each relevant reporting period, along with cash on hand and debts.

C. Other Respondents

the so-called

Alachua Bush-Cheney Committee,
does not appear to exist as a legal entity.

two affidavits from Bush-Cheney

Committee staff working in Florida stated that the Committee did not fund, authorize, or
otherwise encourage the organization of the Alachua County rally or the production of the related
printed materials.

Accordingly, we

recommend that the Commission take no action as to the so-called Alachua Bush-Cheney
Committee.

The remaining Respondents – Roy Hoffman, Charles Plumly, Alvin Horne, John
O'Neill, Bob Perry, Harlan Crow, Merrie Spaeth, Bill Lannom, William Franke, and Weymouth
Symmes – are SwiftVets members, officers, consultants, or donors.

we believe that this

matter warrants an exercise of prosecutorial discretion to take no further action with respect

1 SwiftVets members, officers and consultants, as well as donors who contributed more than
2 \$5,000 to the organization.

3 **D. Conclusion**

4 Based on the foregoing, we recommend the Commission accept the attached Conciliation
5 Agreement with SwiftVets; take no action with respect to the Alachua Bush/Cheney Committee,
6 Roy Hoffman, Charles Plumly, Alvin Horne, John O'Neill, Bob Perry, Harlan Crow,
7 Merrie Spaeth, Bill Lannom, William Franke, and Weymouth Symmes; and close the file in this
8 matter.

9 **IV. RECOMMENDATIONS**

- 10 1. Accept the attached conciliation agreement with Swift Boat Veterans and POWs
11 for Truth;
12 2. Take no further action with respect to the Alachua Bush-Cheney Committee,
13 Roy Hoffman, Charles Plumly, Alvin Horne, John O'Neill, Bob Perry, Harlan
14 Crow, Merrie Spaeth, Bill Lannom, William Franke, and Weymouth Symmes.
15 3. Approve the appropriate letters; and
16 4. Close the file.

17 12/4/06

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20 Date

Lawrence Norton /ms

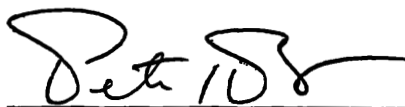
Lawrence H. Norton
General Counsel

Rhonda Vosdingh /ms

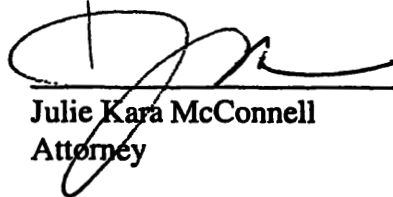
Rhonda J. Vosdingh
Associate General Counsel for Enforcement

Mark Shonkwiler

Mark D. Shonkwiler
Assistant General Counsel



Peter G. Blumberg
Attorney



Julie Kara McConnell
Attorney

Attachment: Proposed Conciliation Agreement

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